

*Thoughts on the digital future of movies,
The threat of piracy,
The hope of redemption*

presented to the
Permanent Subcommittee on Investigations
Senate Committee on Governmental Affairs

Hearing on:
Privacy & Piracy: The Paradox of Illegal File Sharing on Peer-
to-Peer Networks and the Impact of Technology on the
Entertainment Industry

On behalf of the member companies of
THE MOTION PICTURE ASSOCIATION OF AMERICA

by

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*The Peril of Piracy and
the value of movies and Intellectual Property
to this nation*

It was said that during World War I, French General Foch, later to be Supreme Allied Commander, was engaged in a furious battle with the Germans. He wired military headquarters, "My right is falling back, my left is collapsing, my center cannot hold, I shall attack!"

Some say this version is apocryphal. I choose to believe it is true, because that is precisely the way I feel about the assault on the movie industry by 'file-stealers,' a rapidly growing group whose mantra is "I have the technological power to use as I see fit and I will use it to upload and download movies, no matter who owns them for I don't care about ownership."

To paraphrase Mr. Churchill, I did not become the head of the Motion Picture Association to preside over a decaying industry. I am determined to join with my colleagues in making it plain that we will not allow the movie industry to suffer the pillaging that has been inflicted on the music industry. This Committee understands, I do believe, that the movie industry is under attack. And this Committee would agree, I do believe, that we must counter these attacks NOW with all the resolve and imagination we can summon. To remain mute, inert, to casually attend the theft of our movies would be a blunder too dumb to comprehend.

This is not a peculiarly Hollywood problem. It is a national issue that should concern the citizens of this free and

loving land. Why? Because the Intellectual Property community is America's greatest trade export and an awesome engine of growth, nourishing the American economy. Intellectual Property (movies, TV programs, home video, books, music, computer software) brings in more international revenues than agriculture, aircraft, automobiles and auto parts – it is also responsible for over five percent of the GDP – it is creating NEW jobs at THREE times the rate of the rest of the economy, at a time when we are suffering some 2 million job losses. The movie industry alone has a surplus balance of trade with every single country in the world. I don't believe any other American enterprise can make that statement – and at a time when this country is bleeding from a \$400 billion-plus deficit balance of trade.

The very future of this awesome engine of economic growth is at stake. Happily, our movies draw large crowds to the theaters. But record box-office revenues should not blind anyone to the fact that the movie industry sits on a fragile fiscal bottom. The average film costs over \$90 million to make and market. Only one in ten films ever gets this investment returned through theatrical exhibition. Films have to journey through many market venues – premium and basic cable, satellite delivery, home video, network and individual TV stations, international – in order to try to recoup the private risk capital that brings a movie to life.

If a film is kidnapped early in that journey, it's obvious the worth of that film can be fatally depleted long before it can retrieve its investment. Piracy means fewer people buying DVDs, less revenue, and fewer movies being made.

Especially hurt will be creative ventures outside the mainstream that involve greater financial risk.

Add to that the fact that in this country almost one million men and women work in some aspect of the movie industry. These are not high-salaried jobs. They are held by ordinary Americans with families to feed, kids to send to college and mortgages to pay. Their jobs, their livelihoods, are put to extreme peril if we bear witness to the slow undoing of one of America's most valuable job-producing industries.

*The Onslaught grows
in force and speed*

An outside research group has estimated that 400,000 to 600,000 films are being illegally abducted every day. We know this will increase exponentially in the future. The speed of broadband is nothing compared to the supersonic download speeds being developed right now.

Scientists at CalTech have announced "FAST," an experimental program that can download a DVD quality movie in five seconds! Another experiment at Internet II has dispatched 6.7 gigabytes – more than a typical movie – halfway around the world in one minute! Internet II has conducted new experiments that will make that earlier triumph seem like a slow freight train. These technologies are not decades away. What is experiment today will be in the marketplace a few years from now. Can anyone deny that these huge download speeds brood over our future? Can anyone deny that when one can upload and download movies

in seconds or minutes the rush to illegally obtain films will reach the pandemic stage? Can anyone deny the degrading impact this will have on the movie industry? And can anyone deny that limitless stealing of creative works will have a soiling impact on the national economy?

Not only is this piracy endemic in the United States, it flourishes abroad, though most of the pilfering is in the analog format: videocassettes and optical discs, as well as counterfeiting of DVDs. A good part of that thievery springs from organized criminal organizations. We have organized anti-piracy operations throughout the world. We are partnered with local groups in Japan, Great Britain, Germany, France, Italy, in Latin America and other countries where we are every day vigilant, for like virtue we are every day besieged. We estimate that we lose some \$3.5 billion annually in analog and optical disc piracy.

We also know that much of the hard-goods pirated products, especially of films in theatrical release, are the result of people illegally camcording movies in theaters, and then distributing them over the Internet. Then they are stamped onto optical disks and sold for pennies on the streets of Asia and Eastern Europe, even before the movie has a chance to open in those countries. It is not pleasant for legitimate dealers and distributors to watch this breakdown in law and ethics.

What incentive will companies have to create, nourish and market digital movies online when they are kidnapped and flung around the world? Can high value legitimate creative works live in an environment of abundant theft

unchecked and growing? Will legitimate sites (which I will describe below) stand a chance of success competing against blinding-fast speeds of downloads and all for “free”? How does anyone answer that?

President Kennedy once told a story about a French general in Algeria who ordered his gardener to plant a certain species of tree to line the pebbled drive to his chateau. The gardener, astonished, said, “But mon General, that tree takes fifty years to bloom.” To which the General responded, “Ah, we haven’t a moment to lose. Plant them today.” Precisely the way the movie industry address its future – we must plant today the barriers and rebuttals to movie stealing that will go on unchecked tomorrow unless we move with swiftness, resolve and efficiency.

***The dark world of
Peer-to-Peer (P2P) so-called file-swapping sites***

We know that the infestation of P2P not only threatens the well-being of the copyright industries but consumers and their families as well. As hearings in the House and Senate have conclusively established, downloading KaZaa, Gnutella, Morpheus, Grockster, etc., can lay bare your most private financial and personal information to identity thieves. It can bring into your home and expose your children to pornography of the most vile and depraved character imaginable. Most insidious of all, the pornography finds its way to your children disguised as wholesome material: your son or daughter may “search” for “Harry Potter” or “Britney Spears,” and be confronted with files that contain bestiality or child pornography. The pornography distributed through

P2P networks is so horrific that the District Attorney from Suffolk County, New York, recently called it the worst his office had ever seen on the Internet. And the most disturbing fact of all is that any 10-year old can easily and swiftly bring down this unwelcome perversion.

Therefore, the business model that current P2P networks celebrate as “the digital democracy” is built on the fetid foundation of pornography and pilfered copyrighted works.

I invite members of this Committee to go online to KaZaa and see for yourself the mammoth menu of copyrighted works available FREE, as well as an endless listing of the most throat-choking child porn. It’s all there, joyously defiant, enticing all to enter and take whatever you want, risk-free. What a wonderful world we live in!

What would be amusing if it were not so unhelpful are the outcries from critics whose hidden objective is to brutalize and shrink the value of copyright if not totally banish it from the Constitution. They always piously insist they are “opposed to violation of copyright” and then move quickly to defend the right of anyone to use P2P file-swapping sites without regard to who owns the material. Anyone who reads their testimony and dissertations will find, in the words of Horace Walpole, “that they swarm with loose and foolish observations.”

*The amazing Internet
and how the movie industry
wants to use it.*

The Internet, without doubt, is the greatest delivery system yet known to this planet. It has the potential to reshape how we communicate, how we buy and how to enlarge the dispatch of knowledge on a scale never before exhibited.

The movie industry is eager to use the Internet to deploy our movies, thousands of titles of every genre, to homes in this country and around the world. We want to give American families additional options for watching movies. They can make their choices easily, as well, when they want to see a movie. All at fair and reasonable prices, a phrase to be defined by the consumer and no one else.

Already, the industry is working on VideoOnDemand (VOD), so that everything is instantaneous. The consumer clicks a button and the movie is on the screen.

Now available are sites for legitimate movie viewing such as MovieLink, Cinema Now and others. You can call them up immediately and browse through their catalogue titles available. And it's legitimate, not illegal.

There is only one barrier to expand this immense bounty of movies and other entertainment for consumers. It is a forest thickly crowded with outlaws whose mission in life

is to hijack movies and upload them to the Internet; then the feeding begins with illegal downloads. Once we defeat this illegitimacy, the consumers of America will be the cheerful beneficiaries of a never-ending source of high-value entertainment in a lawful environment.

*What the movie industry
is doing to baffle piracy*

What is the movie industry doing to find rebuttals to piracy? We are working to address the corrosive effects of piracy by actively and expensively pursuing a comprehensive plan on multiple fronts with every tool we have at our disposal. We have launched an attack on a broad front to go on the offensive against thievery:

(1) We are trying to educate the public about copyright and explain why it is important to the nation. We have created TV public service announcements (I hope you have seen them), and have joined with colleagues in exhibition who are showing trailers in their theaters. We are in an alliance with Junior Achievement and one million students in grades five through nine, to explain and educate why copyright is central to intellectual property growth, and why filching movies in digital form by uploading and downloading on the Net is not only just plain wrong, but has a malignant effect on the future of American consumers.

(2) We have been meeting with a committee representing the nation's universities. These educational institutions are confronted with huge increased costs for large

amounts of storage space and bandwidth in their state-of-the-art broadband systems, which are devoured by P2P networks. Most universities are now offering to students a catalogue which outlines that taking movies and music off the Net is an infringement of copyright and carries penalties. These codes of conduct informs students so they are aware that what they might consider to be okay and easy, is a violation of copyright and has to be taken seriously.

(3) We are investing all our anti-piracy resources to lift the level of law enforcement not only here but in other countries on every continent. In every region of the globe the MPAA has anti-piracy personnel working closely with law enforcement and local governments to keep pirate activity at bay. It's our intention to invest these efforts with more energy and resolve.

(4) We are embarking on a new project – technological research. We aim to enlist the finest brains of the best in the high technology field to develop technological measures and means to baffle piracy. At the same time we are continuing to work with the most inventive men and women in the IT and CE sectors. By embracing these innovative scientists, I believe we can extract from this research more than a few counter-measures to put together a technological framework where all our industries can thrive, to the benefit of consumers. We are hopeful, very hopeful.

The Role of the Congress

The Congress plays a vital role in establishing legitimacy to the marketplace. Through hearings like this, a forum is provided to explore and probe key issues, and allow debate to take place so that all viewpoints are heard and weighed.

Hearings to date in both chambers have exposed the economic dangers of piracy and its links to organized crime and terrorism. Also the hearings have brought to the ken of the public threats to consumers and the economy by piracy on a swollen scale and pornography easily available to youngsters.

I am sure this Committee understands that in 1998 many meetings took place between all the parties involved in the DMCA legislation. I know very well because I was personally present and active in those meetings. In our conclusions, the ISPs got what they very much wanted, a safe harbor from liability. The copyright holder was given the tools necessary to identify infringers operating in cyberspace. The ISPs were in agreement with the details of the DMCA because they loved that which benefited them. It is wrong for ISPs to revisit an agreement they approved without hesitation.

Copyright holders have a firm belief that the Congress will never approve any legislation to strip copyright holders of their rights, and will never allow America's greatest trade export to become the victim of theft. This we believe.